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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA AND THE)
STATE OF NEVADA *ex rel.* MARY KAYE)
WELCH,)

Plaintiffs,)

v.)

MY LEFT FOOT CHILDREN'S THERAPY,)
LLC, ANN MARIE GOTTLIEB, JONATHAN)
GOTTLIEB,)

Defendants.)

Case No. 2:14-cv-01786-MMD-GWF

**UNITED STATES' AND STATE OF NEVADA'S STATEMENT OF INTEREST
IN RESPONSE TO MOTION TO COMPEL ARBITRATION**

I. INTRODUCTION

Pursuant to 28 U.S.C. § 517, the United States respectfully submits this Statement of Interest to notify the Court of the United States position on Defendants' Motion to Compel Arbitration and Stay Action (ECF# 20, 21). The United States remains a real party in interest in this matter, even though it has not intervened in the action. *United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 720 (9th Cir. 1994). Additionally, the False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, is the United States' primary tool used to redress fraud on the government. The United States has a substantial interest

1 in the development of the law in this area and in the correct application of the law in this, and similar,
2 cases.

3 **II. DISCUSSION**

4 “The issue of arbitrability is to be determined by the contract entered into by the parties.”
5 *Mediterranean Enterprises, Inc. v. Ssangyong Corporation*, 708 F.2d 1458, 1463 (9th Cir. 1983)
6 (citations omitted). However, “[a] party cannot be required to submit to arbitration any dispute which he
7 has not agreed to arbitrate.” *United Steelworkers of America v. Warrior and Gulf Navigation Company*,
8 363 U.S. 574, 582 (1960). Accordingly, “[t]he strong public policy in favor of arbitration does not
9 extend to those who are not parties to an arbitration agreement.” *Kramer v. Toyota Motor Corp.*, 705
10 F.3d 1122, 1126 (9th Cir.) *cert. denied Toyota Motor Corp. v. Choi*, 134 S. Ct. 62, (2013). (citation
11 omitted).

12 Further, the FCA expressly provides that:

13 A person may bring a civil action for a violation of section 3729 for the person and for the
14 United States Government. The action shall be brought in the name of the Government. The
15 action may be dismissed only if the court and the Attorney General give written consent to
the dismissal and their reasons for consenting.

16 31 U.S.C. § 3730 (b)(1).

17 Similarly, Nevada’s False Claims statute also expressly provides in relevant part:

18 Except as otherwise provided in this section and NRS 357.100, a private plaintiff may bring
19 an action pursuant to this chapter for a violation of NRS 357.040 on his or her own account
and that of the State or a political subdivision, or both the State and a political subdivision.
20 The action must be brought in the name of the State or the political subdivision, or both. **After
such an action is commenced, it may be dismissed only with written consent of the court
and the Attorney General.** The court and the Attorney General shall take into account the
21 public purposes of this chapter and the best interests of the parties in dismissing the action or
consenting to the dismissal, as applicable, and provide the reasons for dismissing the action or
22 consenting to the dismissal, as applicable.

23 Nev. Rev. St. § 357.080(1) (emphasis added).

24 The only claims for relief in Plaintiff’s *qui tam* Complaint are for false claims on the United
25 States and the State of Nevada. ECF #1, pp. 16-36. Defendants have filed a Motion “compelling this
26 case into binding arbitration” (ECF #20 at 1:24).

1 The Court should deny the Motion to Compel because the real party in interest in this case, the
2 United States, is not a party to the arbitration agreement. Accordingly, the claims brought by the Relator
3 on behalf of the United States are not be subject to arbitration. Even if this Court were to determine that
4 the FCA claims were subject to arbitration, Section 3730 (b)(1) prohibits dismissal of the case without
5 the consent of the Attorney General. Thus, any arbitration ruling could not bind the United States and
6 would be advisory only.

7 **III. CONCLUSION**

8 The United States is the real party in interest in this case. It is not a party to the arbitration
9 agreement and would not be bound by an arbitration award. The United States respectfully requests that
10 the Court deny Defendant's Motion to Compel (ECF #20).

11 Respectfully submitted this 16th day of November, 2015.

12 ADAM PAUL LAXALT
13 Nevada Attorney General

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